alimony. This action was brought under a statute which permitted a married woman to prosecute a suit at law or equity either in tort or contract in her own name for the preservation and protection of her property and personal rights or for redress of her injuries as if unmarried (Maine R. S. of 1883, ch. 61 § 5). The above holding has been sustained in *Morgan* v. *Martin,* 92 Me. 190. In Massachusetts the rule is somewhat different. That no action can be maintained by the wife for the alienation of her husband's affections, unaccompanied by adultery, see *Houghton* v. *Rice,* 174 Mass. 366, 47 L. R. A. 310; *Crocker* v. *Crocker,* 98 Fed. 702. These actions were brought under statutes which permitted a married woman to sue and be sued as if she were sole. (Stat. 1874, ch. 184 § 3, Pub. Stat. ch. 147 § 7). But the wife was permitted to recover damages for the intentional debauching of her husband, whereby his affections were alienated, in *Nolin* v. *Pearson,* 191 Mass. 283, 77 N. E. 890, 114 Am. St. Rep. 605, 4 L. R. A. (N. S.) 643. In New Jersey no action can be maintained. See *Hodge* v. *Wetzler,* 69 N. J. L. 490, 55 Atl. 49, see article on this case in 2 MICH. LAW REV., pp. 236-237. Another leading case holding that the wife cannot maintain an action of this nature is *Duffies* v. *Duffies,* 76 Wis, 374, 45 N. W. 522, 20 Am. St. Rep. 79, 8 L. R. A. 420, 31 Cent. Law Jour. 29, in which the wife's right of action was denied under a statute permitting her to sue for any injury to her person or character (Laws of 1881, ch. 99). This decision was approved in *Lonstorf* v. *Lonstorf,* 118 Wis. 159, 95 N. W. 961, although in the latter case there were two dissenting opinions. A leading Canadian case on this point is *Quick* v. *Church,* 23 Ont. 262, in which the wife was permitted to maintain her action under a statute permitting her to sue for protection and security of her separate property as if she were a feme sole. (Ontario R. S. of 1887 ch. 132). However this decision did not stand for any length of time, as it was expressly overruled four years later in the case of *Lellis* v. *Lambert,* 24 Ont. App. 653. Both these cases were brought under the same statute.

J. E. W.

WHAT IS CORPORATE ACTION?—The case of *American Soda Fountain Co.* v. *Stolzenbach* (1908), — N. J. L. —, 68 Atl. 1078, in which Judge DILL handed down the opinion, had for its main point, the question as to whether the acts of an officer of a corporation acting in his official capacity were the direct acts of the corporation itself. The facts in the case were briefly these: The American Soda Fountain Co., a New Jersey corporation, sold and delivered a fountain to one Brownley, who gave his notes therefor to the company, secured by a chattel mortgage upon the property, which was duly recorded. Subsequently, a judgment-creditor of the mortgagor seized the property in the mortgagor's possession. The American Soda Fountain Co. thereupon instituted an action in replevin, in which the defendant claimed title under a judgment, execution and sheriff's sale, the company, in opposition to this claim, relying upon its chattel mortgage. The statute of New Jersey concerning chattel mortgages requires that all such mortgages have annexed thereto "an affidavit or affirmation made and subscribed by the

holder of said mortgage, his agent or attorney, stating the consideration of said mortgage and as nearly as possible the amount due or to grow due thereon." The affidavit attached to the mortgage was as follows:

"Alfred H. Lippincot, of full age, being duly affirmed according to law, saith that he is Vice-President of American Soda Fountain Co., the mortgagee named in the foregoing chattel mortgage, etc.; (stating the consideration and the amount due and to grow due).

Affirmed and subscribed to before me this
twenty-third day of October, 1901.

A. H. LIPPINCOT,
Vice-President.

DANIEL S. MANN,
Commissioner of Deeds for New Jersey."

The lower court held this mortgage to be void as to creditors, "because it was verified by the Vice-President, as such, and did not recite that he was the agent or attorney of the company, or that he was specifically authorized to make it." In considering this holding, the court takes the view that a corporation cannot act of itself, but that it does act when those who are responsible for it act in their official capacity; in other words, the court expressly distinguishes between the officers and the agents of a corporation, holding that the former are the inherent actors for the corporate body, and that their acts are the direct acts of the corporation, while those performed by agents and attorneys are entirely intermediate and are governed by the ordinary laws of Principal and Agent. The stand taken is best stated by the following extract from the original opinion which has been slightly changed in the publications: "At the outset it should be kept in mind that we are not dealing with the every-day authority of an officer, agent or attorney to create a corporate contract liability under the law of Principal and Agent where the corporation denies and resists the liability. The issue is only as to the *prima facie* authority of an administrative officer to perform, in behalf of the corporation and in its name, a statutory duty requisite to the obtaining by the corporation of a statutory benefit, the act being ancillary and beneficial to the corporation.

The question is still further narrowed in that the authority of the officer is not questioned by the corporation, but on the contrary the corporation comes into court insisting that the act was authorized and is a valid corporate act, and claiming the statutory benefit thereof. The authority of the officer is challenged by a stranger to the transaction, who, offering no evidence to support his position, seeks to have the statutory benefit accruing to the corporation by reason of the act of the officer declared *nil* on the ground that the record does not show that under the law of Principal and Agent the corporation had precedently conferred upon the officer the authority to perform the act.

If the statute limited the class of persons by whom the affidavit might be made, to agents and attorneys of the holder, there would be more force in the criticism of the defendant-in-error;—but it does not.

On the contrary, the statute specifically provides that the affidavit is to be made by the 'holder' of the mortgage, adding in the alternative 'his agent or attorney.' Inasmuch as a corporation may be a holder of a chattel-mortgage, a judicial decision that as such holder it may make the affidavit only by an agent or attorney would rest either upon the denial of the right of a corporation to be a holder within the meaning of and entitled to the benefits of the statute, or else upon the assumed right of the Court to nullify one of the three modes by which the Legislature has allowed the affidavit to be made. There is, however, no necessity for assuming either of these untenable positions. A corporation may be a holder of a chattel-mortgage and may make this statutory affidavit, as such holder, through its administrative officers, or it may make it by a duly authorized agent or by its attorney."

Most of the cases which might seem to bear upon this question are cases where the proposition is looked at as a question of agency, but there are enough decisions viewing it in the other light to justify the holding here set down by the present New Jersey court. As early as 1834, in the case of *New Brunswick Steamboat Co.* v. *Baldwin,* 14 N. J. L., 2 Green. 440, the question was brought before Chief Justice HORNBLOWER, as to whether the affidavit attached to an appeal bond from a lower court, made by the president of the appellant corporation and acknowledged by him, was made by the *party* appealing, and in regard to that he said, "My opinion is, that an affidavit, made by the president, secretary or other proper officer or agent of a corporation where the corporation is a party to the suit, is, in legal contemplation, an affidavit made by the party," and the same was held to be true as to acknowledgments of deeds made by a corporation in New Jersey. *Hopper* v. *Lovejoy* (1890), 47 N. J. Eq., 2 Dick. 573.

There seem, however, to be two distinct lines of cases on this subject, which apparently conflict on the ground of implied powers inherently attaching to the officers of a corporation. The smaller of these classes seems to give the officer only such powers regarding the acts of the corporation as are specially delegated to him by the directors, and no others outside of the performance of his merely ministerial duties; thus a president may not be allowed to make an affidavit for removal of a cause from the state to the Federal Court, or do any other thing which might affect the rights of the corporation. For this line see *Quigley* v. *C. P. Ry. Co.* (1876), 11 Nev. 350, 21 Am. Rep. 757; *Mahone* v. *Manchester and Lawrence Ry. Corporation* (1872), 111 Mass. 72, 15 Am. Rep. 9, and cases cited; see also *Bennet* v. *Knowles* (1896), 66 Minn. 4. These are cases which recognize in an officer no inherent power of representation at all, but they are distinguishable from the other line in that they treat the acts of the officers indiscriminately with those of agents and do not attempt to distinguish between the two. They are, however, greatly in the minority, and seem to be merely a remnant of the old idea of the strictness with which the acts of corporations were dealt.

Those courts which do recognize inherent powers in the officers of corporations, do not have any hesitancy in declaring what are acts of the cor-

porations themselves, when such acts are done by an administrative officer in his official capacity. Thus under a statute in California which provides that chattel mortgages must be accompanied by the affidavit of all the parties thereto, that it is made in good faith, with no provision for it being made by an agent or attorney, it was held that a certificate made by "W. K. James, secretary of the Commercial Bank of Santa Ana, the mortgagee in said mortgage named," and signed "W. K. James, Secretary" was sufficiently made *by the corporation* to come within the statute. *Yost* v. *Bank of Santa Ana* (1892), 94 Cal. 494. The same construction is put on statutes where the parties are required to verify the pleadings, and in many of these cases the principle upon which the acts of officers are taken as the acts of the corporation is stated to be solely the distinction between officers and agents. *American Insulator Co.* v. *Banker's, etc., Telegraph Co.* (1885), 13 Daly (N. Y.) 200, 205; *Schaft* v. *Phoenix Mutual Life Ins. Co.* (1876), 67 N. Y. 544; *Bank* v. *Hutchinson* (1882), 87 N. C. 22. And the New York Code has so far recognized the rule as to provide that where the party is a domestic corporation, the verification must be made by an officer thereof. § 525. In Wisconsin, where the statute required that the affidavit attached to a petition for change of venue be made by *the party,* the court held that since the affidavit of a corporation must be made by someone acting for it, the proper person is an officer, for they are the ones who give character to the corporate acts, their acts in their official capacity are the acts of the company, and so, such an affidavit made by one of the officers in his official capacity, is the act of the corporation itself. *Wheeler & Wilson M'f'g Co.* v. *Lawson* (1883), 57 Wis. 400. The same view is taken in regard to affidavits for removal of a cause from the state to the Federal Court. *Farmer's Loan & Trust Co.* v. *Maquillan* (1867), 3 Dill. (U. S.) 379, Fed. Cas. 4668; *Minnett* v. *Milwaukee & St. P. Ry. Co.* (1875), 3 Dill. (U. S.) 460, Fed. Cas. 9636; *Commercial Ins. Co.* v. *Mehlman* (1868), 48 Ill. 313. The Vermont court has placed the officer of the corporation as the head of the body, and where the statute requires a plaintiff to make a certain affidavit to secure an *alias* execution, an affidavit made by the president of the corporation stating him to be such, is considered as the affidavit of the corporation. *Ex parte Jabez Sarjeant* (1845), 17 Vt. 425. The same was held in regard to the signing a protest against certain street improvements, where it was required that the protest be signed by the owner of the property; *Los Angeles Lighting Co.* v. *City of Los Angeles* (1895), 106 Cal. 156; and also where an affidavit was required to be made by the party wishing to enforce a lien. *Chapman* v. *Brewer* (1895), 43 Neb. 890; *Bank* v. *Graham et al.* (1889), 22 S. W. (— Tex. Civ. App. —), 1101; *Forbes Lithograph Co.* v. *Winter* (1895), 107 Mich. 116. The acknowlegment of deeds by a corporation is allowed to be done in this manner. *Muller* v. *Boone* (1885), 63 Tex. 91. And there is also a long line of Illinois cases which hold that if an acknowledgment is made by an officer of the corporation in his official capacity, with the corporate seal attached, that is *prima facie* proof of the authority of the officer signing. *Sawyer* v. *Cox* (1872), 63 Ill. 130; *Indianapolis & St. Louis*

Ry Co. v. *Morganstern* (1882), 103 Ill. 149; *Consolidated Coal Co.* v. *Peers* (1894), 150 Ill. 340; *Springer* v. *Bigford* (1896), 160 Ill. 495.

There do not seem to be any English cases that are directly in point on the proposition, but the rule has been laid down by the Canadian courts the same as is expressed by the court of New Jersey. *Bank of Toronto* v. *McDougall* (1865), 15 U. C. C. P. 475.

Much of the confusion that has arisen from this subject is due to two causes: First, the failure to distinguish between acts done for a corporation by its regularly appointed agents, and acts done by the corporation itself through its proper officers. The former must, perforce, come under the rules of the law of Principal and Agent, but the latter are not so governed. There are certain things that must be done by certain officers; each has his own circle of acts and responsibilities, and as long as he stays within this orbit, performing his duties, all his acts are aside from his personality and are acts of the corporation, not by virtue of any agency relation, but by virtue of the office he holds, and he does not need any express authority conferred upon him in order to enable him to do the acts in question. The second cause for confusion comes in defining what are the inherent powers of an officer. It is this which will cause one to think at first blush, that the American Soda Fountain Co. case is in conflict with the case of *North Penn. Iron Co.* v. *Boyce* (1904), 71 N. J. L., 42 Vroom 434, but in the latter case an affidavit for the issue of a writ of attachment was made by the secretary of the plaintiff corporation and it was held void, not because an act of an officer could not be the act of the corporation, but because authority to make affidavits upon which litigation may be instituted is not one of the incidents attaching to the office of corporate secretary unless specially conferred; thus this becomes not a conflict, but a direct following. The same rule is applied in *Meton* v. *Isham Wagon Co.* (1888), 4 N. Y. Supp. 215, and in *Dodge* v. *N. W. Packet Co.* (1868), 13 Minn. 458. R. N. D.